

TEACHING ARBITRATION LAW

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Nearly all law schools in the United States offer some coverage of arbitration law.¹ Many law schools teach arbitration as part of an Alternative Dispute Resolution (ADR) course.² In addition or instead, most law schools have stand-alone arbitration courses.³ These courses may cover arbitration generally or focus on particular types of arbitration, such as labor arbitration or international arbitration.⁴ Some of these arbitration courses are taught as seminars; others are taught in the traditional law-school format. Arbitration may also appear, albeit briefly, in first-year courses, such as Civil Procedure and Contracts. I have taught arbitration law in all of these contexts and at six different law schools,⁵ so I write this article to share some

* Professor of Law, University of Kansas. This short article builds on a presentation at the annual meeting of the Association of American Law Schools. The topic of the panel was Arbitration Pedagogy. Thanks to my co-panelists, Sarah Rudolph Cole and Homer LaRue, and to Jack McCrory and Heather Glenn.

¹ Professor Thomas E. Carbonneau and the Tulane Arbitration Institute recently surveyed 184 law schools and received information from 168 of them. “Only 13 of the total 168 law schools surveyed stated or provided that they do not teach arbitration in any manner or form.” Resource, *Teaching Arbitration in U.S. Law Schools*, 12 WORLD ARB. & MED. REP. 224 (Aug. 2001). Professor Carbonneau says: “This is, literally, a staggering statistical figure. It is difficult to believe that the statement is an accurate representation of pedagogical reality. Some level of ‘puffing’ appears to underlie the response to [this] question.” *Id.* at 225.

² “Of the 168 law schools that responded directly or indirectly to the survey, 63 law schools stated or provided that arbitration was taught only as part of a general ADR course.” *Id.*

³ “One hundred and sixteen (116) U.S. law schools stated or provided that they offered a separate course singularly on arbitration. Of these, 36 offered a general course in arbitration, and 80 offered a course in a specialized area of arbitration (*e.g.*, international commercial arbitration, labor arbitration, or securities arbitration). Seven law schools stated or provided that they offered a course in both general arbitration law and on a specialized subject area in the field.” *Id.* “The distribution of subject areas is as follows:

- 32 labor arbitration
- 29 international commercial arbitration
- 15 commercial arbitration
- 2 securities arbitration
- 1 environmental arbitration
- 1 public-sector bargaining.”

Id. at 226.

⁴ *Id.*

⁵ I have frequently taught arbitration as part of an ADR course, at the University of Kansas, Samford University’s Cumberland School of Law and the University of Alabama. I have taught a stand-alone arbitration course as a seminar at the Ohio State University and in the traditional law school format at Cumberland. I have taught a bit of arbitration law in Contracts courses at both the College of William & Mary and Ohio State. I have also taught an intensive two-day Consumer Arbitration course as part of Hamline University’s summer

thoughts about teaching arbitration law to law students.⁶

I. WHY TEACH ARBITRATION LAW TO LAW STUDENTS?

Teaching students arbitration *law* should be distinguished from teaching students how to be arbitrators. Being a good arbitrator requires much more than a solid grounding in arbitration law. Being a good arbitrator, like being a good judge, requires elusive qualities like wisdom. These are qualities that, to the extent they can be taught in law school at all, can be taught in any course as well as they can be taught in an arbitration course. Furthermore, being a good arbitrator in some contexts requires experiences that simply will not be taught in law school. Being a good arbitrator of commercial disputes within a particular industry, for example, is generally thought to require familiarity with the norms and practices of that industry.⁷

arbitration certificate program. See <http://web.hamline.edu/law/adr/domestic/arbitration/Cert.shtml>.

⁶ Of course arbitration law is also taught to people who are not law students. Arbitration law is taught to practicing lawyers in Continuing Legal Education (CLE) programs, to arbitrators (who may or may not be lawyers) in programs by arbitration providers like the Better Business Bureau, see <http://www.dr.bbb.org/programs/training.asp>, or the National Association of Securities Dealers, see http://www.nasdaq.com/training/atp_map.asp, and, occasionally, to interested members of the public. For example, I taught arbitration law to interested citizens at a public meeting in Montgomery, Alabama, during the height of the 2000 judicial election campaign in which arbitration was a high-profile issue. See, e.g., Stephen J. Ware, *The Alabama Story: Arbitration Shows Law's Connection to Politics, Culture*, 7 DISP. RESOL. MAG. 24 (Summer 2001), reprinted as *Arbitration: A License to Steal*, 12 WORLD ARB. & MED. REP. 316 (Dec. 2001); Stephen J. Ware, *Money, Politics and Judicial Decisions: A Case Study of Arbitration Law in Alabama*, 15 J.L. & POL. 645 (1999).

⁷ See ALAN SCOTT RAU, EDWARD F. SHERMAN & SCOTT R. PEPPET, PROCESSES OF DISPUTE RESOLUTION: THE ROLE OF LAWYERS (3d ed. 2002)[hereinafter RAU ET AL.].

The arbitrator may have a similar background to the parties, or be engaged in the same business; he is likely, then, to be familiar with the presuppositions and understandings of the trade. The usefulness of such expertise is particularly apparent when a contract dispute hinges on interpretation of the agreement—which in turn may depend on the content of trade custom and usage—or when the dispute is over whether goods sold meet the necessary technical standards. In such cases arbitration avoids the task (which may in some cases be insuperable) of educating judge or jury as to the content of these industry norms.

Id. at 601. There are many examples of this point. See, e.g., EDWARD BRUNET & CHARLES B. CRAVER, ALTERNATIVE DISPUTE RESOLUTION: THE ADVOCATE'S PERSPECTIVE 324 (2d ed. 2001)[hereinafter BRUNET & CRAVER] (“The theory of the contracts to arbitrate New York textile disputes was simple—rather than go to court, let a trusted, expert third party who was knowledgeable in the trade and industry customs decide the dispute. Arbitrator expertise was primarily responsible for the success of these textile arbitrations and led the way as other specialized areas of commerce (e.g., construction arbitration) turned toward arbitration and away from litigation.”); Lisa Bernstein, *Opting Out of the Legal System: Extralegal Contractual Relations in the Diamond Industry*, 21 J. LEGAL STUD. 115, 127 (1992)(diamond industry arbitrators “explain that they decide complex cases on the basis of trade custom and usage, a little common sense, some Jewish law, and, last, common-law legal principles”); Soia

So I do not believe that law schools are teaching arbitration law for the purpose of training law students to be arbitrators.

I believe that law schools are teaching arbitration law for the purpose of training law students to be lawyers. An increasing number of lawyers use arbitration law, both as litigators and as transactional lawyers. Over the last generation, arbitration has expanded beyond its traditional domains of disputes among businesses and labor disputes in a unionized workplace.⁸ As arbitration has expanded to cover other sorts of disputes, such as employment discrimination disputes and consumer disputes, lawyers in more and more practice areas have encountered arbitration law. So one of the reasons law schools teach arbitration law is that a wide variety of lawyers will have to know some arbitration law.

I do not believe, however, that the primary purpose of law school is to teach students the law. I believe the primary purpose of law school is to teach students *how to use* the law. In other words, legal education should concentrate on helping students to develop the skills they will use as lawyers. Here, I cite and identify with the American Bar Association's "MacCrate Report,"⁹ which identified ten "fundamental lawyering skills" lawyers should be able to engage in: (1) problem solving; (2) legal analysis and reasoning; (3) legal research; (4) factual investigation; (5) communication (oral and written); (6) counseling; (7) negotiation; (8) litigation and alternative dispute resolution procedures; (9) the organization and management of legal work; and (10) recognizing and resolving ethical dilemmas.

Mentschikoff, *Commercial Arbitration*, 61 COLUM. L. REV. 846, 852-53 (1961) ("one of the factors enhancing predictability of [commercial arbitration] is the extent to which the arbitrator is aware of the trade meaning of the contract terms and the significance of the various aspects of performance under it"). See also *International Produce, Inc. v. A/S Rosshavet*, 638 F.2d 548, 551-52 (2d Cir. 1981) (citation omitted) ("The most sought-after arbitrators are those who are prominent and experienced members of the specific business community in which the dispute to be arbitrated arose").

In addition to the (unwritten) presuppositions and understandings of the trade, some industries have elaborate written trade rules. An arbitrator's familiarity with these written rules can be an especially important factor in making a good arbitrator because in several of these industries arbitrators are expected to rely on these written rules in deciding cases. See, e.g., Lisa Bernstein, *Private Commercial Law in the Cotton Industry: Creating Cooperation Through Rules, Norms, and Institutions*, 99 MICH. L. REV. 1724, 1727-37 (2001) (explaining application of industry-specific terms and rules in cotton industry arbitration); Lisa Bernstein, *The Questionable Empirical Basis of Article 2's Incorporation Strategy: A Preliminary Study*, 66 U. CHI. L. REV. 710, 720-28 (1999); Lisa Bernstein, *Merchant Law in a Merchant Court: Rethinking the Code's Search for Immanent Business Norms*, 144 U. PA. L. REV. 1765, 1774-81 (1996).

⁸ See, e.g., Richard C. Reuben, *Constitutional Gravity: A Unitary Theory of Alternative Dispute Resolution and Public Civil Justice*, 47 UCLA L. REV. 949, 1031 (2000); David S. Schwartz, *Enforcing Small Print to Protect Big Business: Employee and Consumer Rights Claims in an Age of Compelled Arbitration*, 1997 WIS. L. REV. 33, 53-54 (1997); Katherine Van Wezel Stone, *Rustic Justice: Community and Coercion under the Federal Arbitration Act*, 77 N.C. L. REV. 931, 956 (1999).

⁹ Task Force on Law Schools and the Profession, American Bar Association, Legal Education and Professional Development—An Educational Continuum (July 1992).

While some law teachers focus on only some of these skills, usually emphasizing legal analysis and reasoning, other teachers try to cover all of them. The first approach can be justified on the ground that legal analysis and reasoning are more important than the other skills or that analytical and reasoning skills can be readily developed in school while many of the other skills can really only be developed in practice.¹⁰ Of course, the second approach can be justified on the ground that all of these skills are important so some work on each of them better prepares a student for practice than a one-dimensional focus on legal analysis and reasoning.

Whichever approach a law teacher takes, arbitration law is a very good vehicle for achieving the goals of that approach. If the focus is on legal analysis and reasoning then arbitration law is an excellent area of doctrine with which to develop these skills. The first strength arbitration law has in this regard is that it is difficult. Students must do a lot of careful work to understand just the landmark Supreme Court decisions and their dissents.¹¹ For Socratic dialog, this is the best body of case law I have seen in an elective law school course. As rich a body of case law as this is, it is mostly based on a statute, the Federal Arbitration Act.¹² So arbitration law is a terrific vehicle for developing students' skills of analyzing statutes and making arguments based on them. In addition to the combination of statutory and judge-made law, arbitration law features the combination of state and federal law,¹³ the combination of domestic and international law,¹⁴ and the combination of government law and privately made law, which is the law arbitrators make when they decide cases.¹⁵ Each of these combinations creates a tension that generates the sorts of

¹⁰ So the first approach is narrow in that it focuses only on legal analysis and reasoning, but deep in that it presumably develops that one skill better than does the second approach which devotes less attention to it.

¹¹ This is true, for example, of *Green Tree Financial Corp. v. Bazzle*, 539 U.S. 444 (2003); *EEOC v. Waffle House, Inc.*, 534 U.S. 279 (2002); *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001); *Green Tree Financial Corp. v. Randolph*, 531 U.S. 79 (2000); *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52 (1995); *Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265 (1995); *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991); *Volt Info. Sciences, Inc. v. Board of Trustees*, 489 U.S. 468 (1989); *Shearson/American Express Inc. v. McMahon*, 482 U.S. 220 (1987); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985); *Southland Corp. v. Keating*, 465 U.S. 1 (1984); *Commonwealth Coatings Corp. v. Continental Casualty Co.*, 393 U.S. 145 (1968); *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395 (1967); *United Steelworkers of America v. Warrior & Gulf Nav. Co.*, 363 U.S. 574 (1960); *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957); *Bernhardt v. Polygraphic Co. of America, Inc.*, 350 U.S. 198 (1956); *Wilko v. Swan*, 346 U.S. 427 (1953).

¹² 9 U.S.C. §§ 1-16 (2000).

¹³ See, e.g., CHRISTOPHER R. DRAHOZAL, *COMMERCIAL ARBITRATION: CASES AND PROBLEMS* ch. 4 (2002) [hereinafter DRAHOZAL]; IAN R. MACNEIL, RICHARD E. SPEIDEL & THOMAS J. STIPANOWICH, *FEDERAL ARBITRATION LAW* ch. 10 (1994) [hereinafter MACNEIL ET AL.].

¹⁴ See, e.g., DRAHOZAL, *supra* note 13 at ch. 5; MACNEIL ET AL., *supra* note 13 at ch. 44.

¹⁵ See, e.g., MACNEIL ET AL., *supra* note 13 at ch. 3, § 3.2.1; Stephen J. Ware, *Default Rules from Mandatory Rules: Privatizing Law Through Arbitration*, 83 MINN. L. REV. 703 (1999).

issues likely to prompt rigorous analysis and careful reasoning by students. So, to reiterate, arbitration law is an excellent area of doctrine with which to develop the skills of legal analysis and reasoning.

Arbitration is also an area of law very well suited to developing many other lawyering skills. Problem solving is a skill of particular interest to many ADR specialists,¹⁶ so it is no surprise that many ADR and Arbitration casebooks contain good problems relating to arbitration.¹⁷ Students can do these problems on their own, as part of their reading assignments, or students can do them as group exercises. In addition, the teacher can easily create additional hypothetical fact patterns for student role-playing exercises. I drafted and regularly use an exercise focused on factual investigation and client counseling with respect to whether the client, an employer, would benefit from arbitration agreements with its employees. Another exercise I created focuses on arguments in court about the enforceability of an arbitration clause in a credit card bill stuffer. I also wrote an exercise that focuses on the drafting of an arbitration clause in a form contract. Other exercises can have students negotiate the terms of an arbitration agreement in a collective bargaining agreement or an international sale of goods. The possibilities are numerous because arbitration law implicates so many of the roles practicing lawyers play. Arbitration law implicates lawyers' roles as fact-gatherers, researchers, counselors, contract-drafters, negotiators, litigators and advocates in arbitration. Ethical dilemmas arise in all these contexts and can be usefully illuminated in the context of a role-playing exercise.¹⁸ And, of course all of these exercises, as well as Socratic dialog, help develop students' oral communication skills and many of the exercises develop written communication skills, too. Thus, I conclude that arbitration law is very well suited to developing a wide variety of lawyering skills.

¹⁶ See, e.g., Jacqueline M. Nolan-Haley, *Lawyers, Non-Lawyers and Mediation: Rethinking the Professional Monopoly From a Problem-Solving Perspective*, 7 HARV. NEGOT. L. REV. 235, 299 n.48 (2002) ("The Hewlett Foundation has funded a three-year Problem Solving Project for the Dispute Resolution Section of the American Bar Association, [and] the Soros Foundation has funded a Problem-Solving Project for the CPR Institute for Dispute Resolution"). See generally Carrie Menkel-Meadow, *Toward Another View of Legal Negotiation: The Structure of Problem-solving*, 31 UCLA L. REV. 754 (1984).

¹⁷ See, e.g., DRAHOZAL, *supra* note 13 (containing many hypothetical problems throughout); STEPHEN B. GOLDBERG, FRANK E.A. SANDER, NANCY H. ROGERS & SARAH RUDOLPH COLE, *DISPUTE RESOLUTION: NEGOTIATION, MEDIATION, AND OTHER PROCESSES* 244 (4th ed. 2003)[hereinafter GOLDBERG ET AL.]; LEONARD L. RISKIN & JAMES E. WESTBROOK, *DISPUTE RESOLUTION AND LAWYERS, INSTRUCTOR'S MANUAL* 196-201 (2d ed. 1997) [hereinafter RISKIN & WESTBROOK]; ALAN SCOTT RAU, EDWARD F. SHERMAN & SCOTT R. PEPPET, *NOTES FOR TEACHERS, PROCESSES OF DISPUTE RESOLUTION: THE ROLE OF LAWYERS* App. V (3d ed. 2002)[hereinafter RAU ET AL., *NOTES FOR TEACHERS*].

¹⁸ See, e.g., DRAHOZAL, *supra* note 13 (problems 6.2, 6.3, 6.6, 6.13 and 8.2); RAU ET AL., *NOTES FOR TEACHERS*, *supra* note 17 at App. V, pp. 109-22.

II. TEACHING ARBITRATION LAW IN VARIOUS LAW-SCHOOL COURSES

As noted above, law schools teach arbitration law in several different contexts: as part of an ADR course, as a stand-alone Arbitration course, and as a short topic in first-year courses, such as Civil Procedure and Contracts. The following pages contain thoughts about teaching arbitration law in each of these contexts.

A. Teaching Arbitration Law as Part of an ADR Course

The primary teaching tool in law school continues to be the casebook and there are several fine ADR casebooks available.¹⁹ I have used Rau, Sherman & Peppet's *Processes of Dispute Resolution: The Role of Lawyers*,²⁰ and Brunet & Craver's *Alternative Dispute Resolution: The Advocate's Perspective*,²¹ in my ADR courses. Both of these books have been well-received by my students. I like each book's coverage and treatment of all three major areas of ADR: negotiation, mediation and arbitration. While other fine ADR books devote fewer pages to arbitration than to negotiation or mediation, these two books devote more pages to arbitration than to either negotiation or mediation.

¹⁹ In addition to the casebooks mentioned in the text, see GOLDBERG ET AL., *supra* note 17, and RISKIN & WESTBROOK, *supra* note 17.

²⁰ RAU ET AL., *supra* note 7.

²¹ BRUNET & CRAVER, *supra* note 7.

Pages in Chapter on

| | Negotiation | Mediation | Arbitration |
|--|-------------|-----------|-------------|
| Rau, Sherman & Peppet, <i>Processes of Dispute Resolution: The Role of Lawyers</i> (3d ed. 2002) | 249 | 218 | 309 |
| Brunet & Craver, <i>Alternative Dispute Resolution: The Advocate's Perspective</i> (2d ed. 2001) | 156 | 134 | 216 |
| Goldberg, Sander, Rogers & Cole, <i>Dispute Resolution: Negotiation, Mediation, and Other Processes</i> (4th ed. 2003) | 94 | 98 | 76 |
| Riskin & Westbrook, <i>Dispute Resolution and Lawyers</i> (2d ed. 1997) | 165 | 189 | 87 |

There is also a strong casebook that devotes substantially more pages to arbitration than to negotiation and mediation combined. That book, which I have not used, is Stone's *Private Justice: The Law of Alternative Dispute Resolution*.²²

In planning an ADR course, the big decision a teacher must make with respect to arbitration is whether to teach it early in the course, *i.e.*, before negotiation and mediation, or late in the course, *i.e.*, after negotiation and mediation. In the preface to their casebook, Professors Brunet and Craver address this topic as follows.

The organization of the ADR course typically follows this book with negotiation first, followed by mediation and then covering the rest of the alternatives. In contrast, one of us has experimented with starting the ADR course with arbitration. Teachers should give this option some thought. Students find that the unit on arbitration resembles litigation, and, for that reason, is easily digestible at the start of the course. The arbitration sequence of this book involves numerous fascinating cases and the deceptive but critical Federal Arbitration Act. The "familiar" and traditionally demanding feel of the arbitration portion of the course makes it easy to start with at the beginning of a semester. Yet, if arbitration is covered in the second half of a semester, it can be a "reality jolt" for law students who have enjoyed the

²² KATHERINE V.W. STONE, *PRIVATE JUSTICE: THE LAW OF ALTERNATIVE DISPUTE RESOLUTION* (2000).

skills training aspects of negotiation and mediation, usually taught at the start of the ADR course. Teachers who follow the usual path of doing arbitration near the end of a course will need to give thought to helping the students make the transition “back to law school.” Tough cases and hard questions are the order of the day for a well-covered arbitration phase of an ADR course. In our experience, law students enjoy greatly participating in the simulations in the negotiation and mediation phases of this course. Because the negotiation and mediation phases of this course involve only minimal doctrine, some students go into a form of withdrawal when they then turn to arbitration, an area in which problems and simulations have little value. Following arbitration, the teacher can adopt the more traditional order of covering negotiation, mediation and other alternatives. Of course, the price of this option is to lose the value of beginning with the least intrusive, most private process – negotiation – and to turn to other varieties of disputing, each of which involves increasingly formal procedures.²³

Two years ago, I switched the order of my ADR course’s coverage from negotiation-mediation-arbitration to arbitration-negotiation-mediation. I am finding that the latter order works better in my course and I used that order in organizing my own book, the Hornbook on ADR.²⁴

I am finding that starting with arbitration works better for some of the reasons identified by Brunet and Craver. The negotiation and mediation portions of the course do involve less doctrine than the arbitration portion of the course. So the negotiation and mediation portions of the course have more role-playing exercises and more open-ended discussions ungrounded in any solid legal doctrine. When these experiences dominated the early portions of my ADR course, many of my students resisted a late-in-the-semester transition to the “traditionally demanding feel” of the arbitration portion, with its “[t]ough cases and hard questions.”²⁵ By contrast, I have found little mid-semester resistance to a transition from arbitration to negotiation and mediation. I think it is analogous to how my eight-year-old son easily makes the transition at dinner from eating vegetables to eating dessert. By contrast, if I were to let him eat dessert first, I suspect I would meet more resistance in getting him to eat his vegetables.²⁶

²³ BRUNET & CRAVER, *supra* note 7 at vi-vii.

²⁴ STEPHEN J. WARE, *ALTERNATIVE DISPUTE RESOLUTION* (2001).

²⁵ BRUNET & CRAVER, *supra* note 7 at vi-vii.

²⁶ There is also a conceptual reason for starting with arbitration before turning to negotiation and mediation. See STEPHEN J. WARE, *ALTERNATIVE DISPUTE RESOLUTION* § 1.7 (2001). Arbitration is the only ADR process that can produce legally binding results without a post-dispute contract. From the post-dispute perspective then, either arbitration or litigation is the default process, the one process capable of producing a legally binding resolution without further agreement between the parties. All other ADR processes (including negotiation and mediation) are incapable of achieving this status, *i.e.*, of being the post-dispute default process. *Id.* However, negotiation and mediation are often heavily influenced by the default process. That is because negotiators’ expectations about the results of litigation or arbitration shape the negotiators’ attitudes toward various settlement terms. In other words, the default process casts the “shadow of the law.” Whether that shadow is being cast by litigation or arbitration often makes an enormous difference. Consider, for example, the negotiation of a consumer fraud claim against a large out-of-state corporation. Negotiation

B. *Teaching Arbitration Law as a Stand-Alone Course*

While most law schools have stand-alone arbitration courses, there is a lot of diversity in these courses.²⁷ Some are taught as seminars, while others are taught in the traditional law-school format. Some cover arbitration generally, while others focus on particular types of arbitration, such as labor arbitration or international arbitration. This diversity makes it difficult to generalize in discussions about teaching these courses. What works in a twelve-student seminar may not work in a fifty-student course, and what works in a labor arbitration course may not work in an international arbitration course.

I teach a course covering arbitration generally. One of my main goals is to show students the wide variety of contexts in which arbitration is used and the very different “feel” arbitration has in each of these contexts. To accomplish this goal, the book I have used is Rau, Sherman & Peppet’s *Arbitration*,²⁸ a soft-cover version of the arbitration chapter in *Processes of Dispute Resolution*. This book is catholic in its coverage of arbitration. It provides examples of: commercial arbitration, both domestic and international; labor arbitration, both public and private-sector; medical malpractice arbitration, both contractual and mandatory; consumer arbitration, both binding and non-binding; employment arbitration; securities arbitration; construction arbitration; attorney-malpractice arbitration; even rabbinical arbitration.

The downside of Rau, Sherman & Peppet’s *Arbitration*, at least for a three-credit course, is that it is short.²⁹ I supplement it with a thick binder of photocopied cases, state arbitration statutes and other materials. Usually included among the other materials are the rules of an arbitration organization, such as the American Arbitration Association (“AAA”) or the National Arbitration Forum. Comparing these rules with the Federal Rules of Civil Procedure usually gets a day on my syllabus. I find that students are often especially interested in assessing the arbitration organization’s special rules, if any, for consumer or employment disputes.

As noted above, one of my main goals is to show students the wide variety of contexts in which arbitration is used and the very different “feel” arbitration has in each of these contexts. In pursuing this goal, it would help if there were videotapes of arbitration hearings in several different contexts. While the AAA has produced several such videos in the past, those I have seen are generally quite dated and difficult to obtain. My recent attempts (by phone, email and visiting web sites) to buy videos from the AAA met with no success. I believe there is an opportunity for

(or mediation) of this claim will be very different depending on whether the shadow is being cast by an arbitration panel of conservative businessmen or a populist judge and jury in a county with a record of producing high-dollar awards.

²⁷ See *supra* notes 3-5 and accompanying text.

²⁸ ALAN SCOTT RAU, EDWARD F. SHERMAN & SCOTT R. PEPPET, *ARBITRATION* (2d ed. 2002).

²⁹ There are several longer arbitration casebooks. See THOMAS E. CARBONNEAU, *CASES AND MATERIALS ON THE LAW AND PRACTICE OF ARBITRATION* (2d ed. 2000); DRAHOZAL, *supra* note 13; STEPHEN K. HUBER & E. WENDY TRACHTE-HUBER, *ARBITRATION: CASES AND MATERIALS* (1998); KATHERINE V.W. STONE, *ARBITRATION LAW* (2003).

someone to make some money by selling arbitration videos for use in law school classes.

C. Teaching Arbitration Law as Part of a First-Year Course

Arbitration may appear, albeit briefly, in first-year courses, such as Civil Procedure or Contracts. While I have not taught Civil Procedure, I have examined several Civil Procedure casebooks with an eye toward their coverage of arbitration law. Each of these Civil Procedure casebooks has some coverage of arbitration law,³⁰ but none devotes more than about 17 pages to it.³¹

I have taught Contracts several times and try to devote a day or so to arbitration law. The Contracts casebook with the most extensive coverage of arbitration law is Macneil & Gudel's *Contracts: Exchange Transactions and Relations*.³² This book, which I have not used, contains an entire 117-page section on commercial arbitration, plus coverage of labor arbitration and arbitration clauses in the "battle of the forms." One of the authors of this book is Ian R. Macneil, an author of the excellent five-volume treatise, *Federal Arbitration Law*.³³ There are also several other Contracts casebooks with some coverage of arbitration law,³⁴ including the book I have used and liked, Farnsworth, Young and Sanger's *Contracts*.³⁵ More on the treatment of arbitration in Contracts casebooks can be found in a recent article by Stephen Huber, *Arbitration and Contracts: What are the Law Schools Teaching?*³⁶

³⁰ JOHN J. COUND ET AL., CIVIL PROCEDURE (8th ed. 2001); RICHARD D. FREER & WENDY COLLINS PERDUE, CIVIL PROCEDURE (3d ed. 2001); JOEL WM. FRIEDMAN ET AL., THE LAW OF CIVIL PROCEDURE (2002); ALLAN IDES & CHRISTOPHER N. MAY, CIVIL PROCEDURE: CASES AND PROBLEMS (2003); RICHARD L. MARCUS ET AL., CIVIL PROCEDURE: A MODERN APPROACH (3d ed. 2000); LINDA J. SILBERMAN & ALLAN R. STEIN, CIVIL PROCEDURE: THEORY AND PRACTICE (2001); STEPHEN C. YEAZELL, CIVIL PROCEDURE (5th ed. 2000).

³¹ In many of these books, discussion of arbitration is integrated into discussion of ADR so it can be hard to classify pages on whether they are "devoted" to arbitration, or merely to ADR more generally.

³² IAN R. MACNEIL & PAUL J. GUDDEL, CONTRACTS: EXCHANGE TRANSACTIONS AND RELATIONS (3d ed. 2001).

³³ MACNEIL ET AL., *supra* note 17.

³⁴ Contracts casebooks with an "arbitration" listing in the index include RANDY E. BARNETT, CONTRACTS: CASES AND DOCTRINE (2d ed. 1999); STEVEN J. BURTON, PRINCIPLES OF CONTRACT LAW (2d ed. 2001); JOHN P. DAWSON ET AL., CONTRACTS (7th ed. 1998); DAVID G. EPSTEIN ET AL., MAKING AND DOING DEALS: CONTRACTS IN CONTEXT (2002); CHARLES L. KNAPP & NATHAN M. CRYSTAL, PROBLEMS IN CONTRACT LAW (4th ed. 1999); EDWARD J. MURPHY ET AL., STUDIES IN CONTRACT LAW (5th ed. 1997); ARTHUR ROSETT & DANIEL J. BUSSEL, CONTRACT LAW AND ITS APPLICATION (6th ed. 1999); ROBERT S. SUMMERS & ROBERT A. HILLMAN, CONTRACT AND RELATED OBLIGATION (4th ed. 2001); DAVID H. VERNON, CONTRACTS: THEORY AND PRACTICE (1991).

³⁵ E. ALLAN FARNSWORTH ET AL., CONTRACTS: CASES AND MATERIALS (6th ed. 2001).

³⁶ 2 J. AM. ARB. 209 (2002).

III. CONCLUSION

I hope that this short article accomplished a few goals. First, I hope that it provided a useful suggestion or two for those who teach arbitration. Second, I hope that it persuaded some ADR teachers who only touch on arbitration to give serious thought to additional coverage. Third, I hope that it persuaded some teachers to include a bit of arbitration in their first-year courses. Fourth and finally, I hope that it will encourage the continued growth of fine teaching materials (casebooks, videos, etc.), on arbitration.